

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
Portland Division

JOHN BUDD,

CV 07-1912-MA

Plaintiff,

OPINION AND ORDER

v.

MICHAEL ASTRUE,
Commissioner of Social
Security,

Defendant.

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MARSH, Judge.

This matter is before the court on plaintiff's "refiled" Opposed Motion for Attorney Fees (doc. 33) in the amount of \$10,070.00 pursuant to 42 U.S.C. § 406(b).¹ The Commissioner does not challenge the amount of the attorneys fee sought by plaintiff but opposes the motion on the ground it is untimely. For the following reasons, the court finds plaintiff's motion is not untimely and, therefore, **GRANTS** the motion and awards plaintiff the sum of \$10,070.00 as reasonable attorney fees.

On January 22, 2009, in accordance with the stipulation of the parties, the court entered a Judgment reversing and remanding the final decision of the Commissioner denying plaintiff's claim for disability insurance benefits (DIB), supplemental security income (SSI) and auxiliary child benefits (ACB). On January 23, 2009, the court entered an Order that plaintiff submit an application for attorneys fees "within 60 days from the issuance of the Notice of Award by the Commissioner." The Commissioner

¹Plaintiff originally filed this Motion as "unopposed."

issued separate Notices of Award as to SSI on September 1, 2009, DIB on September 30, 2009, and ACB on October 6, 2009.

On December 28, 2009, the District Court for the District of Oregon issued Standing Order 2009-15 requiring applications for attorneys' fees under 42 U.S.C. § 406(b) to be made "within 60 days after receipt of a Notice of Award of past-due benefits" and that a late-filed application "will be deemed timely only upon a showing of good cause for the delay." Standing Order 2009-15, ¶ 8.

Plaintiff filed the pending motion on February 18, 2010, more than 60 days after the Commissioner issued the ACB award. The Commissioner asserts plaintiff should have filed the motion within 60 days of the date he knew he had prevailed and was entitled past due benefits, as ordered by this court and required by Standing Order 2009-15. The Commissioner, therefore, contends plaintiff's motion should be denied as untimely in the absence of good cause shown by plaintiff for the delay.

In response, plaintiff asserts that his counsel diligently but unsuccessfully sought a copy of the ACB award from the Commissioner by making four telephone calls to the "payment center" within the 60-day court-mandated time-frame. Plaintiff asserts he needed a copy of the order awarding him ACB before he could submit the pending motion. He filed the pending motion only 23 days after finally receiving a copy of the ACB award.

On this record, the court finds plaintiff has shown good cause for the delay in filing the pending motion and concludes that the attorney fees incurred and sought by plaintiff are reasonable.

CONCLUSION

For these reasons, the court **GRANTS** plaintiff's Motion (doc. #33) for Attorneys Fees under 42 U.S.C. § 406(b) in the amount of \$10,070.00. The court previously awarded Equal Access to Justice Act (EAJA) attorney fees to plaintiff in the amount of \$5,988.31. Upon receipt of the fee of \$10,070.00, plaintiff's attorney shall refund to plaintiff the EAJA fee in the amount of \$5,988.31.

IT IS SO ORDERED.

Dated this 12 day of April, 2010.

/s/ Malcolm F. Marsh
MALCOLM F. MARSH
United States District Judge